

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JANICE KLEMME, MIGUELA SUAREZ,  
and LARRY SUHRBIER, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

DANIEL K. SHAW, MICHAEL V.  
VILLAMOR, GREGORY SCHATZMAN,  
DANIEL K. SHAW as Trustee of the Dan  
K. Shaw Separate Property Trust, and  
MARK LOGAN as Trustee of the M&M  
Domestic Non Grantor Trust,

Defendants.

2:05-CV-01263-PMP-LRL

ORDER

Presently before the Court is Defendant Mark Logan Trustee of the M&M Trust's Motion for Summary Judgment (Doc. #38), filed on December 15, 2006. Plaintiffs' filed an Opposition (Doc. #39) on January 2, 2007. Defendant Mark Logan did not file a reply.

**I. BACKGROUND**

Plaintiffs bring the present suit as a proposed class action for certain former employees of the Castaways Hotel, Casino and Bowling Center ("Castaways"), which was owned by VSS Enterprises LLC ("VSS"). (Am. Compl. [Doc. #33] at 1-2.) The Castaways ceased operations in January 2004 and VSS filed for bankruptcy. (*Id.* at 2.) Plaintiffs allege that prior to the Castaways' closing, Plaintiffs had withheld from their wages deductions to pay for medical benefits pursuant to the Castaways' employer-sponsored group plan under the Employee Retirement Income Security Act ("ERISA"),

1 29 U.S.C. § 1001 et seq. (Id. at 4-5.) According to the Amended Complaint, the Castaways  
2 promised to contribute additional sums to the ERISA plan but failed to do so, instead  
3 diverting the funds to other uses. (Id. at 5.) As a result, Plaintiffs allege they had to pay  
4 their own medical costs that the ERISA plan should have covered. (Id. at 5.)

5 Plaintiffs allege Defendants Dan K. Shaw (“Shaw”), Michael V. Villamor  
6 (“Villamor”), and Gregory Schatzman were fiduciaries of the Castaways ERISA plan. (Id.  
7 at 3, 8.) According to the Amended Complaint, Defendants breached their fiduciary duties  
8 by intentionally failing to have VSS make the required ERISA contributions for the  
9 Castaways plan and by not timely transmitting to the plan all deductions taken from  
10 Plaintiffs’ wages. (Id. at 5-11.) Plaintiffs further allege Defendants Shaw and Villamor  
11 engaged in fraudulent transfers of property to the Dan K. Shaw Separate Property Trust  
12 (“Shaw Trust”) and M&M Domestic Non Grantor Trust (“M&M Trust”). (Id. at 12-13.)

13 Defendant Mark Logan (“Logan”), Trustee of the M&M Trust, moves for  
14 summary judgment, arguing he is not the alter ego of the Castaways or VSS and therefore  
15 was not a plan fiduciary. Defendant Logan also argues ERISA preempts Plaintiffs’ state  
16 law claim for fraudulent transfer. Plaintiffs respond that they consent to summary judgment  
17 on count one, as they never intended to assert this claim against Defendant Logan.  
18 Plaintiffs argue that with respect to count two, however, ERISA does not preempt a Nevada  
19 state law fraudulent transfer claim.

## 20 **II. DISCUSSION**

21 Summary judgment is appropriate if “the pleadings, depositions, answers to  
22 interrogatories, and admissions on file, together with the affidavits, if any” demonstrate  
23 “there is no genuine issue as to any material fact and . . . the moving party is entitled to a  
24 judgment as a matter of law.” Fed. R. Civ. P. 56(c). The substantive law defines which  
25 facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). All  
26 justifiable inferences must be viewed in the light most favorable to the non-moving party.

1 County of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1154 (9th Cir. 2001).

2 The party moving for summary judgment bears the initial burden of showing the  
3 absence of a genuine issue of material fact. Fairbank v. Wunderman Cato Johnson, 212  
4 F.3d 528, 531 (9th Cir. 2000). The burden then shifts to the non-moving party to go beyond  
5 the pleadings and set forth specific facts demonstrating there is a genuine issue for trial.  
6 Id.; Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 997 (9th Cir. 2001).

7 ERISA preempts state laws that “relate to” any employee benefit plan. 29 U.S.C.  
8 § 1144(a). To determine whether a state law relates to an employee benefit plan, courts  
9 evaluate whether the state law has a connection with or a reference to employee benefit  
10 plans. S. Cal. IBEW-NECA Trust Funds v. Standard Indus. Elec. Co., 247 F.3d 920, 925  
11 (9th Cir. 2001). Courts analyze ERISA’s objectives and the effect of the state law on  
12 ERISA plans to determine whether a state law has a connection with ERISA plans. Id. A  
13 state law refers to an employee benefit plan if it “acts immediately and exclusively upon the  
14 plans or if the plans are essential to the law’s operation.” Id. Additionally, a state law  
15 claim may be preempted based on the effect it has on an ERISA governed relationship. Id.  
16 at 927. “A state statute will not be preempted if it has a tenuous, remote or peripheral  
17 connection with ERISA plans.” Id.

18 ERISA does not preempt a state law of general application that makes no  
19 reference to, and functions irrespective of, the existence of an ERISA plan. See  
20 Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139-40 (1990). For example, ERISA  
21 provides no mechanism for the enforcement of judgments and thus “state-law methods for  
22 collecting money judgments must, as a general matter, remain undisturbed by ERISA . . . .”  
23 Mackey v. Lanier Collection Agency & Serv., Inc., 486 U.S. 825, 833-34 (1988). As a  
24 result, ERISA does not preempt a state law garnishment action against an employee benefit  
25 plan or a state payment bond remedy. Id. at 841; S. Cal. IBEW-NECA Trust Funds, 247  
26 F.3d at 926. Some courts specifically have found ERISA does not preempt state law

1 fraudulent conveyance statutes because they are laws of general application which do not  
2 refer to ERISA, function independently of ERISA, and fill gaps in ERISA's provisions  
3 relating to enforcing judgments. See Cent. States, S.E. & S.W. Areas Pension Fund v.  
4 LaCasse, 254 F. Supp. 2d 1069, 1071-72 (C.D. Ill. 2003); Oregon Laborers-Employers  
5 Health & Welfare Trust Fund v. All State Indus. & Marine Cleaning, Inc., 850 F. Supp.  
6 905, 910 (D. Or. 1994).

7 Nevada's fraudulent transfer statute<sup>1</sup> does not have a connection with or refer to  
8 employee benefit plans because it does not act immediately and exclusively upon the plans  
9 and the plans are not essential to the fraudulent transfer statute's operation. Rather,  
10 Nevada's fraudulent transfer statute is a law of general applicability governing the debtor-  
11 creditor relationship that functions irrespective of the existence of ERISA plans. While  
12 ERISA may provide the context in which the debtor becomes liable to the creditor, the  
13 fraudulent transfer statute is a procedural mechanism by which a creditor may attempt to  
14 ensure assets exist against which to enforce a judgment. As such, it is similar to other state  
15 laws of general application relating to the enforcement of judgments which ERISA does not  
16 preempt, such as garnishment or a payment bond remedy. The Court therefore will deny  
17 Defendant Logan's motion for summary judgment on count two of Plaintiffs' Amended  
18 Complaint.

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26 <sup>1</sup> Nevada Revised Statute § 112.190.

1 **III. CONCLUSION**

2 IT IS THEREFORE ORDERED that Defendant Mark Logan Trustee of the  
3 M&M Trust's Motion for Summary Judgment (Doc. #38) is hereby GRANTED in part and  
4 DENIED in part. The motion is granted with respect to count one of Plaintiffs' Amended  
5 Complaint as to Defendant Mark Logan, Trustee of the M&M Trust only. The motion is  
6 denied as to count two of Plaintiffs' Amended Complaint.

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8 DATED: March 15, 2007.

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11 PHILIP M. PRO  
12 United States District Judge  
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